

REED SMITH LLP

A limited liability partnership formed in the State of Delaware

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Attorneys for Defendants
C.R. Bard, Inc. and Davol, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BERNARD EYTH,
Plaintiff.

vs.

DAVOL, INC., C.R. BARD, INC., and DOES
ONE through TWENTY-FIVE, inclusive,
Defendants.

No.: 10-cv-05024-~~JL~~ MMC

**STIPULATION AND ~~[PROPOSED]~~
ORDER TO STAY PROCEEDINGS
PENDING TRANSFER TO
MULTIDISTRICT LITIGATION; DIRECTIONS
TO PARTIES**

Compl. Filed: November 5, 2010
Attached Documents: Corporate Disclosure
Statement and Statement of Interested Parties

~~Honorable James Larson~~

1 Plaintiff and Defendants C.R. Bard, Inc. and Davol, Inc. by and through their counsel of
 2 record, jointly propose the following stay pursuant to a stipulation based on the following facts:

3 Plaintiff alleges, among other things, that the “Kugel Mesh Patch,” a medical device
 4 manufactured and sold by Defendants C.R. Bard, Inc. and Davol, Inc., and used by Plaintiff’s
 5 surgeon in conjunction with Plaintiff’s hernia repair surgery, was defective and unreasonably
 6 dangerous when put to its intended use.

7 This product liability action is but one of a number of related actions filed in federal courts
 8 across the country. In 2006, in fact, two plaintiffs who also allege that they sustained injuries
 9 resulting from their receipt and use of the Composix® Kugel® Patch filed a motion before the
 10 Judicial Panel on Multidistrict Litigation (“JPML”) seeking transfer and centralization of all cases
 11 involving this medical device pursuant to 28 U.S.C. § 1407. On May 31, 2007, the JPML heard that
 12 motion, and on June 22, 2007, the JPML granted the motion for transfer and consolidation. As a
 13 result, all federal court cases concerning the Composix® Kugel® Patch have been or imminently will
 14 be transferred to the District of Rhode Island for consolidated pretrial proceedings. *See In re Kugel*
 15 *Mesh Hernia Patch Prods. Liab. Litig.*, 493 F. Supp. 2d 1371 (J.P.M.L. 2007).

16 Based on the JPML’s June 22, 2007 Transfer Order, and pursuant to Rules 7.4 and 7.5 of the
 17 Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 435-36 (2001), a
 18 “tag-along” letter concerning this case, among others, was filed with the Clerk of the JPML on
 19 December 14, 2010 (*see* December 14, 2010 Letter to Jeffrey Lüthi, Clerk of the JPML, without
 20 exhibits (Ex. 1)). As has been the normal procedure, we anticipate that the JPML will issue a
 21 conditional transfer order in the coming weeks/months, which will effect transfer of this action to the
 22 United States District Court for the District of Rhode Island. Given that the transfer of this action in
 23 due course will moot any pretrial requirements and schedules imposed by this Court, the parties
 24 request that all requirements, deadlines (including responsive pleading deadlines), and any other
 25 proceedings in this case be stayed pending transfer to the United States District Court for the District
 26 of Rhode Island. Upon transfer, the parties agree and acknowledge that they will comply with any
 27 requirements and deadlines imposed by the District of Rhode Island with respect to this action.

1 IT IS SO STIPULATED.

2 Dated: December 16, 2010

HERSH & HERSH

By: 

Nancy Hersh
Mark E. Burton, Jr.
Attorneys for Plaintiff

8 Dated: December 17, 2010

REED SMITH LLP

By: 

Michael K. Brown
Steven J. Boranian
Laura A. Mastrangelo
Attorneys for Defendants
C.R. Bard, Inc. and Davol, Inc.

14 **IT IS SO ORDERED.** Further, the parties are DIRECTED to file, no later than March 25, 2011, a joint
status report in the event the matter has not been transferred as of that date.

16 Dated: December 23, 2010


United States District Judge

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